

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 62547-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
TERRIONTE DELONE BUTCHER, aka)	UNPUBLISHED
TERRIONTE D. BUTCHER-SIMS,)	
)	FILED: <u>April 26, 2010</u>
Appellant.)	
)	
)	

Cox, J. – Terrionte Butcher-Sims challenges his conviction for possession of cocaine. He claims that the trial court abused its discretion by allowing the State, during closing argument, to open and display to the jury the cocaine in a sealed envelope previously admitted into evidence. Specifically, he claims there was inadequate foundation to permit the display of this evidence during closing. Because the court did not abuse its discretion, we affirm.

Butcher-Sims was detained by police after he was identified as the possible perpetrator of a robbery. He was subsequently booked into the King County Jail after admitting that he had been in an argument with the victim of the robbery.

During the pre-booking search, a corrections officer at King County Jail recovered a clear plastic bag containing a white substance from Butcher-Sims' mouth. The officer gave the bag to the police officer who had transported

Butcher-Sims to the jail for processing. The police officer tested the contents of the bag and determined that it was cocaine. The police officer then placed the bag with its contents into a sealed envelope.

The State charged Butcher-Sims with one count of robbery in the second degree and one count of violation of the Uniform Controlled Substances Act for possession of cocaine.

At trial, the police officer who had placed the bag with its contents into a sealed envelope during booking identified that sealed envelope as the State's Exhibit 1. A forensic scientist with the Washington State Crime Lab testified that he had retrieved the envelope marked as Exhibit 1 from the evidence vault at the crime lab. He opened it, ran two tests on the powder, returned the bag of powder to the envelope, and resealed it. He testified that the bag contained four grams of cocaine.

When the State moved to admit Exhibit 1, defense counsel objected based on the fact that the envelope's label stated that it contained eight grams of cocaine. This was inconsistent with the forensic scientist's testimony that the bag contained four grams of the substance. The trial court sustained this objection, ordered that the label be redacted, and admitted Exhibit 1 into evidence. There was no other objection to admission of this exhibit.

Prior to closing argument, the State indicated that it intended to publish the contents of the sealed envelope—the bag of cocaine—to the jury. Butcher-Sims objected on the ground that the State had not laid an adequate foundation.

This argument was based on the fact that none of the testifying witnesses had opened the envelope during their testimony. The trial court overruled the objection. During closing, the prosecutor opened the envelope, displaying its contents to the jury, saying “This is what four grams of cocaine looks like.”

The jury convicted Butcher-Sims of possession of cocaine.

FOUNDATION

Butcher-Sims argues that the trial court abused its discretion in allowing the State to open the previously admitted exhibit to display its contents to the jury during closing argument. We disagree.

ER 901(a) states:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

In the context of a physical object connected with a crime, it must be properly identified and shown to be in substantially the same condition as when the crime was committed.¹ Chain of custody must be established “*with sufficient completeness* to render it *improbable* that the original item has either been exchanged with another or been contaminated or tampered with.”² Minor discrepancies or uncertainty on the part of a witness will affect only the weight of the evidence, not its admissibility.³

¹ State v. Picard, 90 Wn. App. 890, 897, 954 P.2d 336 (1998).

² State v. Roche, 114 Wn. App. 424, 436, 59 P.3d 682 (2002) (quoting United States v. Cardenas, 864 F.2d 1528, 1531 (10th Cir. 1989)).

³ State v. Campbell, 103 Wn.2d 1, 21, 691 P.2d 929 (1984).

Decisions as to the admissibility of evidence are within the discretion of the trial court, and may be reversed for an abuse of that discretion.⁴

Here, Butcher-Sims does not argue on appeal that there was insufficient foundation to admit the exhibit. In any event, the testimony of the corrections officer, the police officer who tested the contents of the bag that the corrections officer recovered from Butcher-Sims during booking, and the forensic scientist establish that the bag contained cocaine. Their testimony also established the chain of custody of the evidence from recovery to admission of the evidence at trial. Moreover, the trial court properly resolved the objection to admission based on the weight discrepancy between the label on the exhibit and the testimony of the forensic scientist.

The focus of the argument on appeal is the claim that additional foundation was required before the State could display the contents of the exhibit to the jury. The trial court properly ruled on this challenge.

The trial court noted that it is probably preferable to have a witness open and identify the contents of an envelope that is admitted into evidence, but found that in this case, the evidence was properly admitted and could be published during closing arguments. The trial court then set out its reasoning. First, the chain of custody of the evidence was established and not impeached. Second, the discrepancy in weight had been partially explained and was presented to the jury. Furthermore, there was no specific consequence as to the difference in

⁴ State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

weight. Third, from the point of view of the jury, it was unlikely that any discrepancy in weight would affect its decision regarding whether Butcher-Sims unlawfully possessed the cocaine. Finally, the court pointed out that the defendant testified that he possessed the cocaine, knew it was cocaine, and also knew that it was illegal to possess cocaine. There was no abuse of discretion in allowing the State to open the sealed exhibit and display its contents to the jury during closing.

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

Spencer, J.

Grosjean, J.